

Before the Presiding Judges of the Administrative Judicial Regions Per Curiam Rule 12 Decision

APPEAL NO.: 04-003

RESPONDENT: Andrew Weber, Clerk, Supreme Court of Texas

DATE: September 17, 2004

SPECIAL COMMITTEE: Judge B. B. Schraub, Chairman; Judge John Ovard; Judge Olen Underwood; Judge B. B. Schraub; Judge David Peebles; Judge Darrell Hester; Judge Stephen Ables; Judge Dean Rucker; Judge Jeff Walker; Judge Kelly Moore

This appeal is from the Supreme Court's denial of access to its records related to expunction of a particular attorney's disciplinary and suspension records. The court granted access to a copy of the disciplined attorney's request for expunction and the court's response to the request, but denied access to correspondence between the court and staff of the State Bar of Texas about whether the disciplined attorney was a proper candidate for expunction.

The court first contends that the appeal should be dismissed because the requesting attorney did not disclose that he was acting on behalf of a client until this Rule 12 petition was filed. Although Rule 12.6(g) allows the records custodian to make inquiry to establish the proper identification of the requester, Rule 12.4(a)(4) makes the identity of the requester relevant only if the request is made by or on behalf of an incarcerated individual. Because the requester in this petition does not appear to be acting on behalf of an incarcerated individual, we will consider the petition.

Before we reach the issue of exemptions from disclosure, we first consider whether the records are "judicial records" within the definition of Rule 12.2(d). A record made or maintained by a court that pertains to its adjudicative function is not a judicial record. Further, "[a] record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record." Rule 12.2(d) (Emphasis added). The Supreme Court of Texas has both statutory and inherent powers to regulate the practice of law in Texas. *State Bar of Texas v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). When the court acted in the matter of the expunction of disciplinary and suspension records for a particular attorney, it was acting as a court in discharging its constitutionally-imposed duties. Thus, the requested records were created, produced, or filed in connection with a matter that had been before the court, and therefore they are not judicial records within the meaning of Rule 12.

Because the requested records relate to how the court made a decision in a particular matter before it, we also find the records to be exempt from disclosure as judicial work product and drafts (Rule 12.5(a)) and as internal deliberations on court or judicial administration matters (Rule 12.5(f)).

We deny the petition for review.